

DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT OF

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BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

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Good Morning,

Mr. Chairman, I am Michel Lincoln, Deputy Director, Indian Health Service (IHS). I'm pleased to be here today to provide you an update on the Indian Self-Determination Act (P.L. 93-638) regulations development process. I am accompanied today by Mr. Douglas Black, Associate Director of the Office of Tribal Activities (OTA), and Ms. Athena Schoening, Deputy Associate Director of the Office of Tribal Activities.

Let me begin by stating that we share your concerns about the need for the most simple, straightforward regulations as possible. We also share the concerns expressed by the Congress the tribes with respect to the time required to finalize the regulations.

First, with respect to the time involved, we agree it has been an lengthy process. However, to date, we have successfully accomplished a key congressional directive, including a joint Notice of Proposed Rulemaking (NPRM), published January 20, 1994, in the Federal Resister with a 120 day comment period. The Department of Health and Human Services (DHHS) and Department of the Interior (DOI) ensured that the NPRM was developed with substantial tribal participation. From 1988 to 1990, over 600 individual tribal representatives were actively involved in drafting proposed regulations provisions many of which are contained in the NPRM.

From 1991 to 1993, joint Secretarial review, negotiation, policy decisions and clearance was completed-through two Administrations. During this period, the IHS maintained joint communications, through meetings and correspondence, with tribal representatives on draft regulation revisions as policy decisions were made.

In April and May of this year, the Department of Health and Human services (DHHS) and the Department of the Interior (DOI) held three regional throughout the U.S. and a national meeting in Albuquerque. The purpose of these meetings was to orient all tribes to the rationale behind final policy decisions reflected in the NPRM, as well as to receive public comments.

In May, over 400 tribal representatives who attended the national meeting presented to Assistant Secretary of Indian Affairs Ada Deer and myself, a tribal leader consensus statement. This statement requested a three month extension to the original comment period. It also contained a detailed schedule of recommended activities related to the NPRM to be undertaken over the following year including a series of tribal/federal meetings to review comments and negotiate a consensus toward developing a final rule. The IHS has agreed to the tribes' request and extended the comment period to August 20. We are working out procedural arrangements with the Department of the Interior (DOI) and the tribes and plan to begin these meetings in October, 1994.

Based upon the recommended schedule, final regulations are anticipated to be published in November 1995.

While the proposed regulations are longer than the previous issuance they do represent a more simplified process. In the future, all contract requirements will be contained within these regulations where, formerly, key Federal Acquisition Regulation (FAR) provisions, Agency guidelines, manuals, and policies were incorporated by reference. In many instances, tribes provided specific language and text for DHHS and DOI to incorporate into the proposed regulations.

While regulations should not impose undue burdens, they should promote fairness and consistency in Agency decision-making. These types of procedural requirements, in part, limit or define Agency discretion and contribute to overall length. Examples include:

- a provision imposing on the Secretary important requirements, such as timeframes for making decisions to approve or decline a contract;

- a description of the Secretary's obligation to provide technical assistance;

identification of the criteria to be used by the Secretary in making discretionary decisions; e.g. criteria for considering tribal requests for waivers, criteria for approving or disapproving contracts;

a requirement for tribal participation in budget formulation and in the division of joint resources; and

provision for a formal appeal process that goes beyond statutory requirements.

I would like to identify our concerns with S 2036, a bill to prohibit the promulgation of regulations required under the Indian Self Determination Act Amendments of 1988. Most critically, S 2036 seems to endanger many important rights that tribes have gained in the revised Self-Determination Act policy developed pursuant to the regulation drafting process. Tribes anticipate these critical elements will remain in effect once the regulations are finalized. If enacted, the bill would incorporate

A prohibition against the inclusion of other contract terms not negotiated by the contractor and the Secretary;

An elimination of the option for an indefinite term contract, now enjoyed by many tribal contractors;

A requirement for the Secretary and the" tribe to approve the contract, however, timeframes for approval, declination criteria, or rights of tribes, would not be established should the Secretary fail to act favorably or timely.

Funding to be established pursuant to an annual agreement. This would replace the current requirement for the Secretary to fund the minimum amount that would have otherwise been provided, for the contracted purpose, plus contract support costs;

Removal of existing, provisions providing for fairness and equity in funding distributions; and

A requirement for the use of obsolete payment authorities (Letter of Credit).

Another area of concern with S. 2036 is the absence of any indication of the need for collection of data and/or reporting unfounded need for contract support costs.

We are nearing the end of a very long but, we believe, productive policymaking process with tribal governments: The remaining issues to be resolved are important, but relatively few in number.

One key issue is whether program standards-should be included in the regulations or negotiated on a contract-by-contract basis Standards represent the criteria to be used by the Secretary in determining whether or not to contract. These criteria are intended to be used only if national standards are in place for a particular program (such as those established by accrediting organizations, such as the Joint Committee on Accreditation of Hospitals (JCAHO), et al., or by other statute requirements.) Otherwise, tribal standards are permitted and the tribes have the option of selecting appropriate standards.

In summary, we are opposed to the enactment of 8.2036, but appreciate the opportunity to identify our areas of concern. urge the Congress to defer legislative action on the Self-We Determination process until the current regulations process has been finalized and tested. This concludes my opening statement We would be glad to respond to any questions you may have.